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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,054	04/14/2004	Eric Lawrence Barsness	ROC920030052US1	6100

30206   7590   05/13/2010

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EXAMINER
NGUYEN, CINDY

ART UNIT	PAPER NUMBER
2161	

NOTIFICATION DATE	DELIVERY MODE
05/13/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/824,054	BARSNESS ET AL.
	Examiner	Art Unit	
	CINDY NGUYEN	2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 February 2010*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-9, 23-26 and 28-36* is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-9, 23-26, 28-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____ .

DETAILED ACTION

This is response to amendment filed 02/18/2010.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the

new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 6-9, 23-26 and 28-43 are rejected under 35 U.S.C. 102(e) as being

anticipated by Clarke, JR. et al. (US 20040221038, hereafter Clarke).

The applied reference has a common Assignee with the instant

application. Based upon the earlier effective U.S. filing date of the reference, it

constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C.

102(e) might be overcome either by a showing under 37 CFR 1.132 that any

invention disclosed but not claimed in the reference was derived from the

inventor of this application and is thus not the invention "by another," or by an

appropriate showing under 37 CFR 1.131.

Regarding claim 6, Clarke discloses: A computer implemented method for

managing access to the computer resources, the method comprising:

(a) defining a respective financial valuation of each of a plurality of work items to

be processed by one or more data processing systems **(i.e., financial data such as**

generally available interest rates, contractor labor rates, cost of public computer

capacity, price of services to be bought from a dealer, price of on-demand business

services...see paragraph 0044, Clarke);

(b)comparing the respective financial valuation of each respective said work item

to a respective cost of accessing additional computer resources necessary to process the

work item in a current time period, **(i.e., estimated values, may perform algorithmic**

calculations, and ay request additional data from one of the preceding sources, or

from additional external sources...determine and specifying the changes to be

made, specifying an effective time period during which changes should be in

effect...see paragraph 0046; further determined based on potential changes to the

distributed computing workload (e.g., addition or deletion of particular application

jobs at particular locations), configuration modifications (e.g., addition or removal

of resources from a grid) and the resultant economic consequences in increased

revenue, decreased cost as financial valuation, and potential SLA penalties ...see

paragraph 0055, lines 3+ ; 0063; 0068   Clarke) said additional computer resources

being external to said one or more data processing systems (i.e., additional resource

information such as IT data may include data representative of IT resources

external to the corporate environment ...see paragraph 0043 , Clarke); and

(c) with respect to each said work item for which the respective financial

valuation of each the work item exceeds the respective cost of accessing additional

computer resources necessary to process the work item in the current time period,

dynamically accessing additional computer resources necessary to process the work item

in the current time period (i.e., if the alternate values indicate a higher value/exceeds

the respective cost may be obtained, then the decision is made to alter the

environment..., ...see paragraphs 0055, lines 3+; 0056, lines 4+ , Clarke);

(d) with respect to each said work item for which the respective financial

valuation of the work item does not exceed the respective cost of accessing additional

computer resources necessary to process the work item in the current time period,

deferring processing of the work item to a subsequent time period (i.e., determined that

no modification of the environment is advisable, the method recommences at step

310. If a modification is indicated in step 340, the change is effected...see

paragraphs 0058; for example, if an application is deemed to be causing congestion

on the database, it may be advantageous to reduce its priority correspond to

deferring processing of the work item to a subsequent time period , see 0065, lines

27+, Clarke); and

(e) repeating said (b) through (d) in one or more subsequent time periods with respect to each said work item deferred by said (d) until each said work item has been processed **(i.e., reexamed to see if such changes would be advisable....see paragraphs 0065, lines 27+; 0068, lines 5+, Clarke);**

Regarding claim 23, Thompson discloses A method of providing fee-based processing for programs in a processor system, whereby fees are based on utilization of computer resources for completing processing a program, the processor system including at least one processor (see paragraph 0029); a memory coupled to the at least one processor, and a scheduling manager residing in the memory (see paragraph 0029, lines 6), the method comprising the steps of:

(a) defining a respective financial valuation of each of a plurality of programs to be processed **(i.e., financial data such as generally available interest rates, contractor labor rates, cost of public computer capacity, rice of services to be bought from a dealer, price of on-demand business services...see paragraph 0044, Clarke);**

(b) comparing the respective financial valuation of each respective said program to a respective projected fee for utilization of computer resources to process said program in a current time , **(i.e., estimated values, may perform algorithmic calculations, and ay request additional data from one of the preceding sources, or from additional external sources... determine and specifying the changes to be made, specifying an effective time period during which changes should be in effect**

...see paragraph 0046; further determined based on potential changes to the distributed computing workload (e.g., addition or deletion of particular application jobs at particular locations), configuration modifications (e.g., addition or removal of resources from a grid) and the resultant economic consequences in increased revenue, decreased cost as financial valuation, **and potential SLA penalties ...see paragraph 0055, lines 3+ , Clarke)** said additional computer resources being external to said one or more data processing systems **(i.e., additional resource information such as IT data may include data representative of IT resources external to the corporate environment ...see paragraph 0043 , 0063; 0068   Clarke);**

(c) with respect to each said program for which the respective valuation of the program exceeds the respective projected fee for utilization of computer resources to process the program in the current time period, dynamically accessing computer resources to be applied to a process the program in the current time period **(i.e., if the alternate values indicate a higher value may be obtained, then the decision is made to alter the environment..., ...see paragraphs 0055, lines 3+; 0056, lines 4+ , Clarke);**

(d) with respect to each said program for which the respective financial valuation of the program does not exceed the respective projected fee for utilization of computer resources to process the program in the current time period, deferring processing of the program to a subsequent time period **(i.e., determined that no modification of the environment is advisable, the method recommences at step 310. If a modification is indicated in step 340, the change is effected...see paragraphs 0058; for example, if an application is deemed to be causing congestion on the database, it may be**

advantageous to reduce its priority correspond to deferring processing of the work
item to a subsequent time period , see 0065, lines 27+, Clarke); and

(e) repeating said (b) through (d) in one or more subsequent time periods with
respect to each said program deferred by said (d) until each said program has been
processed (i.e., reexamed to see if such changes would be advisable....see paragraphs
0065, lines 27+; 0068, lines 5+, Clarke); and

(f) assessing a fee for the dynamically accessed computer resources to be used
(i.e., financial data 220, see paragraph 0041, Clarke).

Regarding claim 29, Clarke discloses: An apparatus and a networks environment
comprising:

at least one processor (see paragraph 0050, lines 6);

a memory coupled to the at least one processor (see paragraph 0050, lines 6); and

a scheduling manager residing in the memory and executable on the at least one
processor, the scheduling manager dynamically managing access of each of a plurality
of work items to additional computer resources external to said data processing
apparatus for processing the respective work item, each said work item being a
respective item of work performable by a data processing system and having a
respective financial valuation (see paragraphs 0009; 0049; 0050; 0054, Clarke);

wherein said scheduling manager, in each of a plurality of time periods, compares
the respective financial valuation of each unprocessed work item to a respective cost of
accessing said additional computer resources to process the work item in the respective
financial time period, and with respect to each said work item for which the respective

financial valuation exceeds the respective cost of accessing the additional computer

resources to process the work item in the respective time period, dynamically accesses

the additional computer resources to process the work item in the respective time period

(i.e., estimated values, may perform algorithmic calculations, and ay request

additional data from one of the preceding sources, or from additional external

sources...determine and specifying the changes to be made, specifying an effective

time period during which changes should be in effect...see paragraph 0046; further

determined based on potential changes to the distributed computing workload

(e.g., addition or deletion of particular application jobs at particular locations),

configuration modifications (e.g., addition or removal of resources from a grid) and

the resultant economic consequences in increased revenue, decreased cost as

financial valuation, and potential SLA penalties ...see paragraph 0055, lines 3+ ;

0063; 0068 Clarke); and

with respect to each said work item for which the respective valuation does not

exceed the respective cost of accessing the additional computer resources to process the

work item in the respective time period, defers processing of the work time to a

subsequent time period (i.e., determined that no modification of the environment is

advisable, the method recommences at step 310. If a modification is indicated in

step 340, the change is effected...see paragraphs 0058; for example, if an

application is deemed to be causing congestion on the database, it may be

advantageous to reduce its priority correspond to deferring processing of the work

item to a subsequent time period , see 0065, lines 27+, Clarke).

Regarding claim 33, A program product comprising:

a scheduling manager embodied as a plurality of computer-executable instructions

recorded on computer-readable storage medium, wherein said scheduling manager,

when executed by a computer system, causes the computer system to (see paragraphs

0009; 0049; 0050; 0054, Clarke);

(a) compare a respective defined financial valuation of each of a plurality of work

items to be processed by the computer system to a respective cost of accessing

additional computer resources necessary to process the work item in a current time

period, said additional computer resources being external to said computer system **(i.e.,**

estimated values, may perform algorithmic calculations, and ay request additional

data from one of the preceding sources, or from additional external sources…

determine and specifying the changes to be made, specifying an effective time

period during which changes should be in effect …see paragraph 0046; further

determined based on potential changes to the distributed computing workload

(e.g., addition or deletion of particular application jobs at particular locations),

configuration modifications (e.g., addition or removal of resources from a grid) and

the resultant economic consequences in increased revenue, decreased cost as

financial valuation**, and potential SLA penalties…, if the alternate values indicate a**

higher value may be obtained, then the decision is made to alter the

environment…, …see paragraphs 0055, lines 3+; 0056, lines 4+ , Clarke);

(b) with respect to each said work item for which the respective financial

valuation of the work item exceeds the respective cost of accessing additional computer

resources necessary to process the work item in the current time period, dynamically

accesses additional computer resources necessary to process the work item in the current

time period , **(i.e., estimated values, may perform algorithmic calculations, and ay**

request additional data from one of the preceding sources, or from additional

external sources...see paragraph 0046; further determined based on potential

changes to the distributed computing workload (e.g., addition or deletion of

particular application jobs at particular locations), configuration modifications

(e.g., addition or removal of resources from a grid) and the resultant economic

consequences in increased revenue, decreased cost as financial valuation, **and**

potential SLA penalties..., if the alternate values indicate a higher value may be

obtained, then the decision is made to alter the environment..., ...see paragraphs

0055, lines 3+; 0056, lines 4+; 0063; 0068 , Clarke);

(c) with respect to each said work item for which the respective financial

valuation of the work item does not exceed the respective cost of accessing additional

computer resources necessary to process the work item in the current time period, defers

processing of the work item to a subsequent time period **(i.e., determined that no**

modification of the environment is advisable, the method recommences at step 310.

If a modification is indicated in step 340, the change is effected...see paragraphs

0058; for example, if an application is deemed to be causing congestion on the

database, it may be advantageous to reduce its priority correspond to deferring

processing of the work item to a subsequent time period , see 0065, lines 27+,

Clarke);

and

(d) repeats said (a) through (c) in one or more subsequent time periods with respect to each said work item deferred by said (c) until each said work item has been processed **(i.e., reexamed to see if such changes would be advisable....see paragraphs 0065, lines 27+; 0068, lines 5+, Clarke).**

Regarding claim 37, all the limitation of this claim has been noted in rejection of claim 29, In addition, Clarke discloses: a grid of computing resources (see paragraph 0023);

a request manager of the grid to receive requests of one or more customers for utilization of computing resources of the grid (i.e., network management module 151 communicate with other computing systems 120, 130, 140, 150, 160, fig. 1, Clarke);

one or more computer systems of a customer coupled to the request manager; the one computer system comprising one or more processors (see paragraph 0038, Clarke).

With respect to claim 41, it is similar as claim 6 and 23 and is similarly rejected.

Regarding claims 7, 21, 24, 30, 34 and 38, all the limitations of these claims have been noted in the rejection of claims 6, 20 and 23, 29 and 37 above, respectively. In addition, Clarke discloses: wherein the scheduling manager applies a valuation heuristic to each work item **(i.e., estimated values, may perform algorithmic calculations, and ay request additional data from one of the preceding sources, or from additional external sources…see paragraph 0046; further determined based on potential changes to the distributed computing workload (e.g., addition or deletion of particular application jobs at particular locations), configuration modifications**

(e.g., addition or removal of resources from a grid) and the resultant economic

consequences in increased revenue, decreased cost as financial valuation, and

potential SLA penalties..., if the alternate values indicate a higher value may be

obtained, then the decision/applied is made to alter the environment..., ...see

paragraphs 0055, lines 3+; 0056, lines 4+ , Clarke);

Regarding claims 8, 22 and 25, 31, 35, 39 and 42, all the limitations of these

claims have been noted in the rejection of claims 6, 20 and 24, 29, 33, 37 and 41 above,

respectively. In addition, Clarke discloses: further comprising applying a priority

algorithm for preventing starvation of computer resources to those work items which

have been delayed, whereby the processing of all the work items in a program is

completed (i.e., the priority may be determined via algorithm... and make decision

change that impact to valued customers...paragraph 0068, lines 8+, Clarke).

Claims 9, 32, 36 and 40. In addition, Clarke discloses: comprising having the

priority algorithm increase respective valuations of delayed work items so as to

complete processing of each of the work items prior to or at a cut off processing date of

the work item (i.e., the priority may be determined via algorithm...and make

decision change that impact to valued customers...paragraph 0068, lines 8+; 0064,

Clarke).

Regarding claim 26, all the limitations of this claim have been noted in the

rejection of claim 25 above. In addition, Clarke discloses: wherein the dynamic

determination is based on different attributes of the one or more work items forming at

least part of a program **(i.e., attributes of configuration, resources, performance,**

utilization, hardware and software ...are determined from these systems...see

paragraph 0039, Clarke).

Regarding claim 28, all the limitations of this claim have been noted in the

rejection of claim 6 above. In addition, Clarke discloses: wherein said method is used in

a networked environment including a grid of computing resources (see paragraph 0023),

and a request manager of the grid to receive requests of one or more customers for

utilization of computing resources of the grid (i.e., network management module 151

communicate with other computing systems 120, 130, 140, 150, 160, fig. 1, Clarke);

wherein said additional computer resources comprise computing resources of said

grid of computing resources wherein one or more computer systems of a customer is

coupled to the request manager and include one or more processors (see paragraph 0038,

Clarke);

a memory coupled to at least the one processor (paragraph 0050); and,

a scheduling manager residing in the memory and executable by the at least the

one processor (see paragraph 009; 0049, Clarke).

Regarding claim 43, all the limitations of this claim have been noted in the

rejection of claim 41 above. In addition, Clarke discloses: wherein said method is used

in a networked environment including a grid of computing resources (paragraph 0043,

Clarke), and a request manager of the grid to receive requests of one or more customers

for utilization of computing resources of the grid (see paragraph 0049, 0050, Clarke);

wherein said additional computer resources comprise computing resources of said grid

of computing resources (see paragraphs 0043, Clarke).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection

presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as

set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire

THREE MONTHS from the mailing date of this action. In the event a first reply is

filed within TWO MONTHS of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory

period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Contact Information

Any inquiry concerning this communication or earlier communications from

the examiner should be directed to CINDY NGUYEN whose telephone number is

(571)272-4025. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the

examiner's supervisor, Apu Mofiz can be reached on 571-272-4080. The fax

phone number for the organization where this application or proceeding is

assigned is 571-273-8300.

Information regarding the status of an application may be obtained from

the Patent Application Information Retrieval (PAIR) system. Status information

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free). If you would like assistance from a USPTO Customer Service

Representative or access to the automated information system, call 800-786-

9199 (IN USA OR CANADA) or 571-272-1000.

/C. N./
Examiner, Art Unit 2161

/A Oberley/

Primary Examiner, Art Unit 2100